

REMARKS

This paper is submitted in response to the Office Action mailed October 10, 2006. Claims 1, 3, 5, 7, 9 and 10 have been amended. Claims 1-10 now remain in the application. In view of the foregoing amendments, as well as the following remarks, Applicants respectfully submit that this application is in complete condition for allowance and request reconsideration of the application in this regard.

The application was originally filed with 10 claims, of which claims 5 and 7-10 have been objected to and claims 1-4 and 6 have been rejected. The drawings and specification are also objected to.

The drawings are objected to because, the Office Action asserts, "Figure 3b makes reference to Figure 3b ('a temporary fixation device of Fig. 3b')" when the "description should refer to Figure 3a." Applicant agrees with the typographical error correctly pointed out by the Examiner.

Applicants have corrected the typographical error in the Brief Description of the Drawings section of the specifications to recite "a temporary fixation device of FIG. 3a."

Having cured the objection, and further as the correction does not introduce any new matter, Applicants respectfully submit that the objection has been overcome.

The disclosure is objected to because of some informalities. A first objection refers to the use of the reference numeral 101 to designate “the rod” in page 14, line 4. This typographical error has been corrected, in accordance with the suggestion by the Examiner, such that the text in question now reads “the rod 102.”

A second objection refers to the use of the reference numeral 26 in page 14, line 18, to designate “the contour.” This typographical error has been corrected such that the text in question now reads “the corresponding exterior surface contour of driver engagement region 26.”

A third objection refers to the use of the reference numeral 150 in page 15, line 16 to designate a handle used in an anti-torque arrangement. This typographical error has been corrected, in accordance with the suggestion by the Examiner, such that the text in question now reads “handle 201.”

Applicants respectfully submit that, having made the necessary changes to address these objections and further, as these corrections do not introduce new subject matter, the objections have been overcome.

Claims 1-4 and 8 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,649,931 to Bryant et al. ("Bryant"). The Applicants presume that the text "Claims 1-4 and 8 are rejected" in the Office Action is a typographical error, and that it should read "Claims 1-4 and 6 are rejected" to make it consistent with the Office Action Summary. This presumption is based on the assertion, in the body of the Rejection, that Bryant teaches an axially directed shoulder, which is the subject matter of claim 6. The discussion hereinafter will be based on this presumption. Please advise Applicants if this understanding is in error.

In the Office Action, the Rejection asserts:

Bryant et al. discloses a spinal surgical instrument comprising: an outer cannula having a proximal end, distal end and an outer lumen passing there between, the distal end of the outer lumen configured to releasably mount to a securing arrangement for a spinal implant; an inner cannula having a proximal end, a distal end and an inner lumen passing there between, the inner cannula being axially moveable within the outer lumen of the outer cannula; a fixing member having a proximal end and a distal end, the fixing member positioned within the inner lumen and including an arrangement for advancing and retracting the fixing member within the inner lumen of the inner cannula (see Figure 1 and 2).

(Office Action, p. 3-4).

Applicants respectfully disagree. Bryant teaches "an orthopedic apparatus 10 which is used to remove and/or drive an elongated fixation member, such as a bone screw 12" (col. 2, lines 39-42), and includes a shaft 16 "disposed within body 14 [having]

a distal end 34 which . . . has an exterior configuration (FIGS. 3, 5 and 6) which is adapted to mate with recess 24 of enlarged head 22 [of bone screw 12].” (col. 3, lines 5-9; FIGS. 4, 5.) As best appreciated in FIG. 5 of Bryant, the parts construed by the Rejection to be the inner cannula and the fixing member (Office Action Figures 1-2, p. 4) are the ones configured to releasably mount to a securing arrangement in the form of the bone screw 12, not the part the Rejection construes to be the outer cannula, as recited in independent claim 1.

There is no teaching or suggestion in Bryant indicating an outer cannula having an engagement structure configured to releasably mount to a securing arrangement for a spinal implant. Exemplary embodiments of the engagement structure on the outer cannula are discussed on page 9, line 20 through page 10, line 8 of Applicants’ specification. Accordingly, Applicants respectfully submit that independent claim 1 as amended recites a combination of elements not taught or suggested by Bryant and the claim should therefore be allowed.

Moreover, as claims 2-4 and 6 depend from allowable independent claim 1, and further as each of these claims recites a combination of elements not taught or suggested in Bryant, Applicants respectfully submit that these claims are allowable as well.

Portions of claims 1, 3, and 9 have been amended herein, not in response to any rejection, but to clarify certain language relative to the outer cannula, outer lumen and inner cannula threads.

Claims 5, 7, 9 and 10 stand objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form. In accordance with the suggestion made in the Office Action, claims 5, 7, 9 and 10 have been accordingly amended such that they are now written in independent form.

Accordingly, Applicants respectfully submit that further since each of claims 5, 7, 8, 9 and 10 recites a combination of elements not taught or suggested in the known prior art, these claims should be allowed.

Conclusion

In view of the foregoing response including the amendments and remarks, this application is submitted to be in complete condition for allowance and early notice to this affect is earnestly solicited. If the Examiner believes any matter requires further discussion, the Examiner is respectfully invited to telephone the undersigned attorney so that the matter may be promptly resolved.

Applicant believes that a one month extension and associated fees are due in connection with this response, and hereby petitions for same. However, if any

additional petition is required or any fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to deposit account 23-3000.

Reconsideration and Notice of Allowance is respectfully requested.

Respectfully submitted,

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